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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,451	09/20/2004	Kenneth M. Bednasz	U04-0103.96	5450

54494 7590 10/04/2007

MOORE AND VAN ALLEN PLLC FOR SEMC
P.O. BOX 13706
430 DAVIS DRIVE, SUITE 500
RESEARCH TRIANGLE PARK, NC 27709

EXAMINER
PHAN, TRI H

ART UNIT	PAPER NUMBER
2616	

MAIL DATE	DELIVERY MODE
10/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/711,451	BEDNASZ, KENNETH M.	
	Examiner	Art Unit	
	Tri H. Phan	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 September 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Communication(s)

1. This office action is in response to the Application filed on September 20th, 2004. Claims 1-7 are now pending in the application.

Claim Objections

2. Claim 1 is objected to because of the following formalities:

In claim 1, the terms "can …be" are not positive recited claimed limitation and makes limitation(s) following the term optional. It is suggested applicants change into the positively terms.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-3 are rejected under 35 U.S.C. 102(a) as being anticipated by **Olofsson et al.** (U.S.6,668,159; hereinafter refer as '**Olofsson**').

- In regard to claim 1, **Olofsson** discloses a *method of providing a data capability indication on a mobile phone* ('bit rate indicator'; for example see Abstract) *such that a user can*

determine whether a particular data application ('communication services'; for example see col. 1, lines 5-31) *on the mobile phone can currently be executed on the mobile phone network* (for example see col. 2, line 49 through col. 3, line 22; col. 3, lines 46-62). *the method comprising:*

(a) obtaining a minimum data throughput requirement for the application (for example see step 2 in fig. 3; col. 4, lines 47-58; wherein data throughput of each type of terminal's operation and coding/modulation schemes capabilities as described in col. 5, lines 8-49, is the "*minimum data throughput requirement for the application*");

(b) calculating a current maximum data throughput rate between the mobile phone and the mobile phone network (for example see step 4 in fig. 3; col. 5, lines 49-51; col. 6, lines 53-55; wherein the maximal bit rate for the connection is calculated);

(c) determining whether the current data throughput rate is greater than the minimum data throughput requirement of the application (for example see figs. 5A-E; col. 3, lines 46-62; col. 6, line 58 through col. 7, line 25; wherein bit rate indicator bar graphs [see figs. 5A-E] are provided to user for comparing or determining whether the maximal bit rate or predicted bit rate is greater than the other);

(d) displaying a positive indicator on the mobile phone that the application can currently be run, if the current data throughput rate is greater than or equal to the minimum data throughput requirement of the application (for example see fig. 5B; col. 7, lines 1-6; wherein, in the display, the predicted bit rate indicator is equal or above, e.g. "*positive indicator*", the maximal bit rate indicator);

(e) displaying a negative indicator on the mobile phone that the application cannot currently be run, if the current data throughput rate is less than the minimum data throughput

requirement of the application (for example see figs. 5A, 5C-E; col. 6, line 58 through col. 7, line 35; wherein, in the display, the predicted bit rate indicator is less than, e.g. "*negative indicator*", the maximal bit rate indicator).

- Regarding claim 2, **Olofsson** further discloses, *wherein steps (b) through (e) are repeated periodically to obtain and apply the current maximum data throughput rate between the mobile phone and the mobile phone network* (for example see step 6 in fig. 3; col. 5, lines 58-65; wherein the predicted bit rate is periodically estimating and displaying to user as disclosed in col. 6, lines 21-35).

- In regard to claim 3, **Olofsson** further discloses, *wherein the positive indicator appears as the application displayed normally by the mobile phone* (for example see figs. 5A-E; col. 7, lines 26-39; where the bit rate indicator bar graphs are shown to user on the mobile station display, e.g. "*as application displayed normally by the mobile phone*").

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Note: the terms "can …be" are not positive recited claimed limitation and makes limitation(s) following the term optional.

6. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Olofsson et al.** (U.S.6,668,159).

- In regard to claims 4-5, **Olofsson** does discloses how the bit rate indicator bar graphs, e.g. maximal and predicted bit rates, are displayed on the mobile station's display (for example see figs. 5A-E; col. 4, lines 42-45; col. 7, lines 32-39); but fails to explicitly disclose, wherein the negative indicator appears as *shaded out* on the display or wherein the positive indicator appears as in a *first color* and the negative indicator appears as in a *second different color* on the display of the mobile phone; however, the *shaded out* or *different colors* to display the bar graphs is obvious to the person of ordinary skill in the art at the time of the invention was made to apply into the **Olofsson**'s display; with the motivation being to display to user as other type of visual means as described in col. 7, lines 37-39, for easily recognizing the difference between level of bit rates.

- Regarding claims 6-7, **Olofsson** does discloses, how data rate is displayed ("*current data throughput rate icon expressed in bits per second*"; for example see col. 5, lines 53-57) and how the bit rate indicator bar graphs, maximal and predicted bit rates as in figs. 5A-E, are displayed in the mobile station's display (for example see col. 4, lines 42-45; col. 7, lines 32-39); but fails to explicitly disclose the *dBm level icon* for displaying the current maximum data throughput rate. However, such implementation, e.g. *dBm level icon*, is just the design choices for displaying data throughput rate. Hence, it is obvious to the person of ordinary skill in the art at the time of the invention was made to display data throughput rate in *dBm level* into the

Olofsson's display; with the motivation being to display to user, as other type of visual means as described in col. 7, lines 37-39, by choices of the designer.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Udicha et al. (U.S.2005/0113028), **Moon, Sung-Jun** (U.S.2004/0166811) and **Sano, Eiichi** (U.S.7,167,697) are all cited to show method for displaying receiving signal of mobile station in telecommunication architectures, which are considered pertinent to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri H. Phan, whose telephone number is (571) 272-3074. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi H. Pham can be reached on (571) 272-3179.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(571) 273-8300

Hand-delivered responses should be brought to Randolph Building, 401 Dulany Street, Alexandria, VA 22314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office, whose telephone number is (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri H. Phan
September 27, 2007

CHI PHAM
SUPERVISORY PATENT EXAMINER 9/28/07